



Republic of the Philippines  
Supreme Court  
Manila

FIRST DIVISION

EDUARDO SANTOS,  
Petitioner,

G.R. No. 221277

Present:

PERALTA, C.J.,  
Chairperson,  
CAGUIOA,  
CARANDANG,  
ZALAMEDA, and  
GAERLAN, JJ.

- versus -

REPUBLIC OF THE  
PHILIPPINES,  
Respondent.

Promulgated:

MAR 18 2021

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DECISION

CARANDANG, J.:

Before this Court is a Petition for Review on *Certiorari*<sup>1</sup> under Rule 45 of the Rules of Court (Rules), assailing the Decision<sup>2</sup> dated April 20, 2015 and the Resolution<sup>3</sup> dated October 13, 2015 of the Court of Appeals (CA) in CA-G.R. CV No. 100868 filed by petitioner Eduardo Santos (Eduardo).

<sup>1</sup> Rollo, pp. 21-31.

<sup>2</sup> Penned by Associate Justice Ricardo R. Rosario (now a member of this Court) with the concurrence Presiding Justice Andres B. Keyes, Jr. (former member of the Court) and Associate Justice Edwin D. Sorongon; id. at 9-14.

<sup>3</sup> Id. at 16-17.

### Antecedents

On August 9, 2011, Eduardo filed a petition for correction of entries and cancellation of annotation in his certificate of live birth (COLB) under Rule 108 of the Rules praying that his records in the civil registry be corrected to reflect his surname as "Santos" instead of "Cu," his nationality as "Filipino" instead of "Chinese," his filiation as "illegitimate" instead of "legitimate", and his mother's civil status as "single" instead of "married." Impleaded as respondents in his petition are the Local Civil Registrar of Manila, National Statistics Office, and all persons who shall be affected by the proceedings. The Office of the Solicitor General was notified through service of a copy of the petition.<sup>4</sup>

Eduardo alleged that he was born in Manila on June 10, 1952 to his Chinese father, Nga Cu Lay, and Filipino mother, Juana Santos, who were not legally married. Though his parents lived together as common-law husband and wife, his father purportedly had a subsisting marriage to a Chinese woman in China. Eduardo claimed that when he was born, the midwife who filled out and registered his COLB erroneously indicated his nationality as "Chinese" and his filiation as "Legitimate." Furthermore, his Filipino mother was indicated as "married" to his Chinese father. Eduardo averred that he has always used his mother's surname, "Santos," and that he elected Filipino citizenship in due time.<sup>5</sup>

After compliance with the jurisdictional requirements, and upon due notification to the Office of the Solicitor General (OSG), National Statistics Office (NSO), and Local Civil Registrar of the City of Manila, Eduardo presented his evidence consisting of the following: (1) Eduardo's Election of Philippine Citizenship;<sup>6</sup> (2) Oath of Allegiance;<sup>7</sup> (3) Affidavit of his mother Juana Santos to the effect that he is an illegitimate child because she was not legally married to his Chinese father;<sup>8</sup> (4) documents showing that he exercised his right of suffrage;<sup>9</sup> (5) His Judicial Affidavit; (6) His COLB;<sup>10</sup> (7) Death Certificate of Juana Santos who died on May 30, 1994;<sup>11</sup> (8) Death Certificate of Cu Lay who died on May 9, 1973 stating that he was married to a certain Dy Yam of China;<sup>12</sup> and (8) other documents showing Eduardo's use of the surname "Santos."<sup>13</sup>

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<sup>4</sup> Id. at 67-68.

<sup>5</sup> Id. at 10.

<sup>6</sup> Id. at 81-87.

<sup>7</sup> Id. at 88.

<sup>8</sup> Id. at 89.

<sup>9</sup> Id. at 90-91.

<sup>10</sup> Id. at 74.

<sup>11</sup> Id. at 75.

<sup>12</sup> Id. at 76.

<sup>13</sup> Id. at 92-99.

### Ruling of the Regional Trial Court

On February 22, 2013, the RTC rendered its Decision,<sup>14</sup> the dispositive portion of which reads:

WHEREFORE, judgment is hereby rendered ordering the Local Civil Register of Manila and the National Census and Statistics Office to effect the necessary correction in the entry of the Birth Certificate of EDUARDO SANTOS, as follows:

- a) to indicate and enter therein the surname of petitioner's mother "SANTOS" as his last name;
- b) to correct his filiation from "legitimate" to "illegitimate";
- c) to correct his nationality from "Chinese" to "Filipino"; and
- d) to correct the civil status of petitioner's mother from "married" to "single".

The corrected Birth Certificate shall be issued once this Decision has become final and executory and upon payment by petitioners of the requisite legal fees.

Let copies of this Decision be furnished the Local Civil Registrar of Manila, the Office of the Solicitor General and the National Statistic Office.

SO ORDERED.<sup>15</sup>

The RTC held that Eduardo satisfied the requirement of publication under Section 4 of Rule 108 of the Rules.<sup>16</sup> The RTC also found unmeritorious the claim of the public prosecutor that Eduardo's evidence is hearsay and self-serving and that the recourse he availed is misplaced because of his own admission that he was Chinese by birth. For the RTC, Eduardo had satisfactorily shown that he is entitled to the reliefs prayed for.<sup>17</sup>

### Ruling of the Court of Appeals

On April 20, 2015, the CA rendered its Decision,<sup>18</sup> the dispositive portion of which states:

**WHEREFORE**, the *Decision* dated 22 February 2013 of the Regional Trial Court, Branch 32, Manila, in Sp. Proc. No. 11-126185 for Cancellation of Annotation in the Birth Certificate of Eduardo Santos, granting the petition is **PARTIALLY REVERSED** and **SET ASIDE**.

<sup>14</sup> Penned by Presiding Judge Thelma Bunyi-Medina; id. at 67-73.

<sup>15</sup> Id. at 72-73.

<sup>16</sup> Id. at 72.

<sup>17</sup> Id.

<sup>18</sup> *Supra* note 2.

Eduardo is hereby **DECLARED** to be a Filipino citizen, but his surname shall remain “Cu” and he remains to be a legitimate child of his father, Nga Cu Lay. The Civil Registrar of Manila is **DIRECTED** to correct the entries accordingly.

***SO ORDERED.***<sup>19</sup> (Emphasis and italics in the original)

The CA agreed with the ruling of the RTC that Eduardo’s citizenship is Filipino because the 1935 Constitution – which was in force at the time of his birth – states that a child born of a Filipino mother who elects Philippine citizenship upon reaching the age of majority is a Filipino citizen.<sup>20</sup>

However, with regard to Eduardo’s filiation, the CA found that he failed to overcome the legal presumption that he is a legitimate child of his parents. The CA gave credence to the COLB of Eduardo which was considered a formidable evidence pursuant to the Civil Code and Article 172 of the Family Code for purposes of recognition and filiation.<sup>21</sup> The CA held that upon expiration of the periods fixed in Article 170, and in proper cases, Article 171 of the Family Code, the action to impugn the legitimacy of a child would no longer be legally feasible and the status conferred by the presumption becomes fixed and unassailable.<sup>22</sup> The CA added that only the father, or in exceptional instances, the latter’s heirs, can contest in an appropriate action the legitimacy of a child born to his wife.<sup>23</sup>

In ruling that the affidavit of Juana Santos (Juana) hardly establishes Eduardo’s alleged illegitimate filiation, the CA explained that a child born during a marriage shall be considered legitimate even if the mother may have declared against its legitimacy or may have been sentenced as an adulteress. For the CA, to give credence to Juana’s affidavit would be to allow her to arrogate unto herself a right exclusively lodged in the husband, or in a proper case, his heirs.<sup>24</sup>

In a Resolution<sup>25</sup> dated October 13, 2015, the CA denied Eduardo’s motion for partial reconsideration for lack of merit.<sup>26</sup>

In the present petition,<sup>27</sup> Eduardo insists that the CA failed to give credence to his mother’s notarized affidavit stating that she was not legally married to Nga Cu Lay.<sup>28</sup> He asserts that the notarized affidavit of Juana should be admitted as it enjoys the presumption of regularity<sup>29</sup> and should

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<sup>19</sup> *Rollo*, p. 14.

<sup>20</sup> *Id.* at 11.

<sup>21</sup> *Id.* at 11-12.

<sup>22</sup> *Id.* at 12-13

<sup>23</sup> *Id.* at 13

<sup>24</sup> *Id.*

<sup>25</sup> *Supra* note 3.

<sup>26</sup> *Rollo*, p. 17.

<sup>27</sup> *Id.* at 21-51.

<sup>28</sup> *Id.* at 50.

<sup>29</sup> *Id.* at 44, 50.

suffice in establishing his illegitimate status. He even attached a Certificate of No Marriage (CENOMAR)<sup>30</sup> purportedly issued by the NSO to prove that Juana does not appear in the National Indices of Marriage.<sup>31</sup> He also maintains that he should be allowed to use the surname of his mother because he has been using “Santos” in all of his dealings and transactions as shown in various documents he presented.<sup>32</sup>

In its Comment,<sup>33</sup> the OSG argued that: (1) The affidavit of Juana cannot be admitted as evidence of Eduardo’s pedigree, particularly his relationship with his parents who allegedly were not married, for failure of another family member to testify thereon;<sup>34</sup> (2) Even if Eduardo himself may properly testify on Juana’s affidavit, the Family Code bars him and Juana from questioning his legitimacy;<sup>35</sup> (3) The CENOMAR attached to the petition cannot be considered by the Court as it was not presented and formally offered during trial.<sup>36</sup>

In his Reply,<sup>37</sup> Eduardo points out that a family member need not corroborate his testimony on matters contained in his mother’s affidavit because this is not required under Section 39, Rule 130 of the Rules. He submits that it is sufficient that the relationship between the two persons, Eduardo and Juana, is shown by evidence other than her declaration in her affidavit. For Eduardo, his relationship to his mother is not entirely dependent on her affidavit, but is also established in other evidence such as his COLB. Eduardo maintains that Juana Santos’ affidavit should be accorded full weight and credence.<sup>38</sup> Eduardo also highlights that the rule in Article 170 of the Family Code limiting only to the husband, or in his default, his heirs, the action to impugn the legitimacy of the child presupposes the existence of a valid marriage between the parents of the child which is not present in this case.<sup>39</sup> He reiterates that, absent a valid marriage between his parents, the restriction in Article 170 of the Family Code cannot not apply.<sup>40</sup>

### Issue

The issue to be resolved in this case is whether Eduardo may impugn his legitimate status and claim that he is a Filipino citizen through a petition for correction of entries in his COLB filed under Rule 108 of the Rules.

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<sup>30</sup> Id. at 79.  
<sup>31</sup> Id.  
<sup>32</sup> Id. at 48.  
<sup>33</sup> Id. at 124-133.  
<sup>34</sup> Id. at 128-129.  
<sup>35</sup> Id. at 130-131.  
<sup>36</sup> Id. at 131-132.  
<sup>37</sup> Id. at 185-188.  
<sup>38</sup> Id. at 186.  
<sup>39</sup> Id. at 186-187.  
<sup>40</sup> Id. at 187.

## Ruling of the Court

At the outset, it must be pointed out that neither of the parties assailed the authority of the lower court ordering the correction of entries in the COLB of Eduardo through a petition he filed under Rule 108.

Section 8, Rule 51 of the Rules provides:

Section 8. Questions that may be decided. – No errors which does not affect the jurisdiction over the subject matter or the validity of the judgment appealed from or the proceedings therein will be considered unless stated in the assignment of errors, or closely related to or dependent on an assigned error and properly argued in the brief, save as the court may pass upon plain errors and clerical errors.

As a rule, a court does not have power to decide questions except as presented by the parties in their pleadings.<sup>41</sup> No error which was not assigned and argued may be considered unless such error is: (1) closely related to or dependent on an assigned error; or (2) it affects the jurisdiction over the subject matter on the validity of the judgment.<sup>42</sup> The courts have ample authority to rule on matters not raised by the parties in their pleadings if such issues are indispensable or necessary to the just and final resolution of the pleaded issues.<sup>43</sup> In *Insular Life Assurance Co., Ltd. Employees' Association v. Insular Life Assurance Co., Ltd.*,<sup>44</sup> it was explained that:

The Supreme Court has ample authority to review and resolve matters not assigned and specified as errors by either of the parties in the appeal **if it finds the consideration and determination of the same essential and indispensable in order to arrive at a just decision in the case.** This Court, thus, has the authority to waive the lack of proper assignment of errors if the unassigned errors closely relate to errors properly pinpointed out or if the unassigned errors refer to matters upon which the determination of the questions raised by the errors properly assigned depend.

The same also applies to issues not specifically raised by the parties. the Supreme Court, likewise, has broad discretionary powers, in the resolution of a controversy, to take into consideration matters on record which the parties fail to submit to the Court as specific questions for determination. Where the issues already raised also rest on other issues not specifically presented, as long as the latter issues bear relevance and close relation to the former and as long as they arise from matters on record, the Court has the authority to include them in its discussion of the controversy as well as to pass upon them. In brief, in **those cases wherein questions not particularly raised by the parties surface**

<sup>41</sup> *Asian Transmission Corporation v. Canlubang Sugar Estates*, 457 Phil. 260, 285 (2003).

<sup>42</sup> *Multi-Realty Development Corp v. Makati Tuscan Condominium Corp*, 524 Phil. 318 (2006).

<sup>43</sup> *Hi-Tone Marketing Corporation v. Baikal Realty Corporation*, 480 Phil. 545, 561 (2004).

<sup>44</sup> 166 Phil. 505 (1977).

**as necessary for the complete adjudication of the rights and obligations of the parties and such questions fall within the issues already framed by the parties, the interests of justice dictate that the Court consider and resolve them.**<sup>45</sup> (Citations omitted; emphasis supplied)

In this case, the resolution on the propriety of the remedy Eduardo availed in seeking the reliefs he prayed for in his petition, which appear to be beyond the ambit of the authority of the trial court in petitions filed under Rule 108, is indispensable and crucial in determining whether the decision of the CA should be upheld. Thus, the Court is accorded a broad discretionary power to waive the lack of proper assignment of errors and to consider errors not assigned, including those affecting jurisdiction over the subject matter.

In the present case, Eduardo's petition for correction of entries in his COLB was filed under Rule 108 of the Rules. Section 2 of the same Rule enumerates the entries that may be subject to cancellation or correction:

Section 2. *Entries subject to cancellation or correction.* – Upon good and valid grounds, the following entries in the civil register may be cancelled or corrected: (a) births; (b) marriage; (c) deaths; (d) legal separations; (e) judgments of annulments of marriage; (f) judgments declaring marriages void from the beginning; (g) legitimations; (h) adoptions; (i) acknowledgments of natural children; (j) naturalization; (k) election, loss or recovery of citizenship; (l) civil interdiction; (m) judicial determination of filiation; (n) voluntary emancipation of a minor; and (o) changes of name.

In *Republic v. Valencia*,<sup>46</sup> the Court clarified that a petition for correction of entry under Rule 108 of the Rules covers not only clerical errors, but also substantial changes. The difference lies only on the procedure which would govern the correction sought. In *Republic v. Tipay*,<sup>47</sup> the Court clarified the difference as follows:

If the correction is clerical, then the procedure to be adopted is summary. If the rectification affects the civil status, citizenship or nationality of a party, it is deemed substantial, and the procedure to be adopted is adversary.<sup>48</sup>

A perusal of the arguments alleged in the petition and the reliefs he prayed for reveal that the changes sought to be reflected are substantial and may only be resolved through the appropriate adversary proceedings under Rule 108. In this case, Eduardo sought the correction of the following entries in his COLB to reflect his surname as "Santos" instead of "Cu," his nationality as "Filipino" instead of "Chinese," his filiation as "illegitimate" instead of "legitimate," and his mother's civil status as "single" instead of "married." What Eduardo seeks to correct are not mere clerical errors as the changes

<sup>45</sup> Id.

<sup>46</sup> 225 Phil. 408 (1986).

<sup>47</sup> *Republic v. Tipay*, 826 Phil. 88, 99 (2018), citing *Republic v. Olaybar*, 726 Phil. 378 (2014).

<sup>48</sup> Id.

sought to be carried out are substantial. It is not a simple or negligible matter of correcting a single letter in his surname due to a misspelling. Rather, Eduardo's filiation, status, and citizenship will be gravely affected. This will affect not only his identity, but his successional rights as well.

Considering the nature of the changes sought to be reflected in the COLB, Rule 108 requires that the proper parties be impleaded and that the order fixing the time and place for hearing the petition be published:

Section 3. *Parties.* – When cancellation or correction of an entry in the civil register is sought, the civil registrar and all persons who have or claim any interest which would be affected thereby shall be made parties to the proceeding.

Section 4. *Notice and publication.* – Upon the filing of the petition, the court shall, by an order, fix the time and place for the hearing of the same, and cause reasonable notice thereof to be given to the persons named in the petition. The court shall also cause the order to be published once a week for three (3) consecutive weeks in a newspaper of general circulation in the province.

Section 5. *Opposition.* – The civil registrar and any person having or claiming any interest under the entry whose cancellation or correction is sought may, within fifteen (15) days from notice of the petition, or from the last date of publication of such notice, file his opposition thereto.

The persons who must be made parties to a proceeding concerning the cancellation or correction of an entry in the civil register are: (1) the civil registrar; and (2) all persons who have or claim any interest which would be affected thereby. In this case, the civil registrar was properly impleaded. It is settled that both parents of Eduardo are already dead and may no longer be impleaded in his petition. Though publication of the notice of hearing may cure the failure to implead all affected or interested parties in certain cases, Eduardo failed to demonstrate to the Court that he exerted earnest efforts in bringing to court all possible interested parties, including his siblings, their descendants, and the purported Chinese wife of his father. Simply alleging in his petition that he is impleading "all persons who shall be affected" by the proceedings does not satisfy the requirement under Section 3 of Rule 108.

Even assuming that there are no other existing interested parties who may be affected by the outcome of the petition and that there is substantial compliance with Section 3 of Rule 8, the Court still cannot grant the reliefs prayed for in Eduardo's petition.

Nevertheless, the dismissal of Eduardo's petition for correction of entries and cancellation of annotation in his COLB is without prejudice to the filing of another petition under Rule 108 to modify his surname from "Cu" to "Santos," the last name of his mother. This is consistent with the





Court's recent ruling in *Alanis III v. Court of Appeals*<sup>49</sup> where the petitioner was permitted to use his mother's surname when he filed a petition for change of name. The Court held that "a legitimate child is entitled to use the surname of either parent as a last name."<sup>50</sup> The change in Eduardo's surname may be permitted after impleading the civil registrar and "all persons who have or claim any interest which would be affected thereby" and upon presentation of all his evidence, including the purported CENOMAR of his parents which he improperly introduced for the first time at this stage of the proceedings. The trial court shall direct the Philippine Statistics Authority to submit an authenticated certificate confirming the fact of marriage or no marriage between the parents of Eduardo, Juana Santos and Nga Cu Lay.

In view of the foregoing, the Court no longer deems it necessary to discuss the other arguments raised by the parties.

**WHEREFORE**, the Decision dated April 20, 2015 and the Resolution dated October 13, 2015 of the Court of Appeals in CA-G.R. CV No. 100868 are **SET ASIDE**. The petition for correction of entries and cancellation of annotation in the certificate of live birth of petitioner Eduardo Santos docketed as Sp. Proc. No. 11-126185 is **DISMISSED**, without prejudice.

**SO ORDERED.**

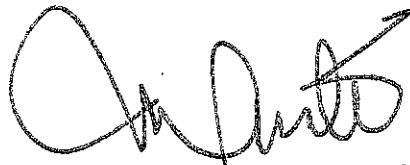
  
ROS MARI D. CARANDANG  
Associate Justice

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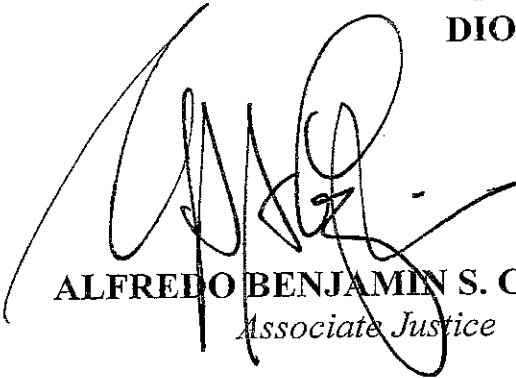
<sup>49</sup> G.R. No. 216425, November 11, 2020.

<sup>50</sup> Id.

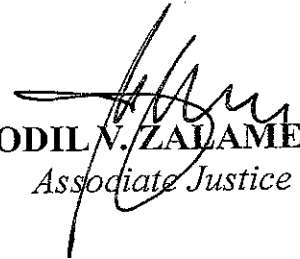
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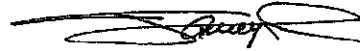
**DIOSDADO M. PERALTA**  
*Chief Justice*



**ALFREDO BENJAMIN S. CAGUIOA**  
*Associate Justice*



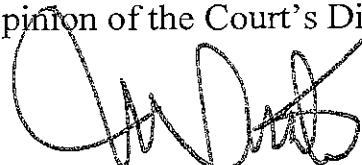
**RODIL N. ZALAMEDA**  
*Associate Justice*



**SAMUEL H. GAERLAN**  
*Associate Justice*

**CERTIFICATION**

Pursuant to Section 13, Article VIII of the Constitution, I certify that the conclusions in the above Decision had been reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.



**DIOSDADO M. PERALTA**  
*Chief Justice*